

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

DOROTHY RUEL,

Plaintiff

v.

YORK COUNTY, et al,

Defendants

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Civil No. 92-134 P

**MEMORANDUM DECISION ON DEFENDANT'S SUPPLEMENTAL MOTION
FOR SUMMARY JUDGMENT ¹**

I previously granted summary judgment in favor of defendant York County but denied summary judgment as to defendant deputy sheriff Clifford Scott, concluding that the incomplete factual record then before the court did not support summary judgment in his favor on the grounds of either collateral estoppel or qualified immunity and that his failure to support his claim of entitlement to discretionary immunity under the Maine Tort Claims Act with developed argumentation amounted to a waiver of that defense for purposes of his original motion. Memorandum Decision on Defendant's Motion for Summary Judgment ("Memorandum Decision") (Docket No. 21).

Before the court now is Scott's supplemental motion for summary judgment, filed with the court's consent, which is accompanied by a fuller record. Scott once again asserts that there is no genuine issue as to any material fact, that the claims are barred by the doctrine of collateral estoppel as a result of the plaintiff's criminal conviction of assault against him and that he is entitled to immunity under section 1983 and discretionary immunity under the Maine Tort Claims Act.

Because the account of the plaintiff and Scott's conflicting versions of the material facts

¹ Pursuant to 28 U.S.C. 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

contained in my original decision is unaffected by the present, more complete record, I refer the reader to that account. Memorandum Decision at 2-6.

COLLATERAL ESTOPPEL

In a section 1983 action, "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984); *Casagrande v. Agoritsas*, 748 F.2d 47, 48 (1st Cir. 1984) (per curiam). Under Maine law, "[w]hen a criminal proceeding terminates in a final judgment of conviction, the convicted party is precluded from relitigating the issues *essential* to that conviction in subsequent civil actions." *Beale v. Chisholm*, 626 A.2d 345, 347 (Me. 1993) (emphasis in original). In order to determine what issues of fact were necessarily resolved at the criminal trial, the reviewing court must "examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration." *Ashe v. Swenson*, 397 U.S. 436, 444 (1970) (citation and internal quotation marks omitted); *see also Cardillo v. Zyla*, 486 F.2d 473, 475 (1st Cir. 1973); *State v. Spearin*, 463 A.2d 727, 730 (Me. 1983). This is particularly so where the antecedent action was a criminal trial because, generally, such trials do not result in anything but the ultimate issue of guilt or innocence. *See Mastracchio*, 498 F.2d at 1261.

In this supplemental motion for summary judgment, Scott once again argues that under the instructions given to the jury concerning reasonable force, it was required to find that at *no* time during the course of the arrest did he employ excessive force. If this were so, the issues as to excessive force in the previous and present actions would be identical, and the plaintiff's present action would be precluded under principles of collateral estoppel.

The court presently has before it the entire record of the criminal proceeding in *State v.*

Ruel. After examining and the jury charge,² I conclude that the plaintiff's criminal conviction for assault does not preclude her present suit. Based upon the judge's instructions on assault and self-defense, I am unable to exclude the possibility that the jury may have found that at some instant the plaintiff used unjustified force upon Scott, leading to her assault conviction, but without having necessarily determined that at all other times Scott used only reasonably necessary force.

In order to convict the plaintiff of assault on Scott, the criminal jury had to be convinced beyond a reasonable doubt (1) that the plaintiff caused offensive physical contact to the defendant and (2) that such contact was not justified as self-defense. *See* Trial Transcript Vol. III at 268-69, 270. According to the judge's instructions, however, such a determination was not dependent upon a finding that at no time during the course of the arrest did the defendant employ excessive force. To the contrary, on the issue of self-defense the judge specifically instructed the jury that an arrested person loses justification to defend against an officer's use of force if that person was the initial aggressor *even though* "the arrested person later establishes the unlawfulness of the officer's use of force." Trial Transcript Vol. III at 270. Thus, based upon the judge's instructions and the trial testimony, the jury could very well have concluded that the plaintiff was the initial aggressor,

² The case was submitted to the jury with the following instruction on the use of reasonable force:

A law enforcement officer is justified in using a reasonable degree of nondeadly force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person, unless he knows that the arrest or detention is illegal.

Trial Transcript Vol. III, Exh. E to Exhibit Notebook in Support of Defendant Clifford Scott's Statement of Material Fact, at 269.

On the issue of self-defense, the jury was instructed as follows:

So when a person is placed under arrest they should not use a violent response to what they believe is an illegal arrest. However if in making the arrest the officer uses more force than the law allows him, the victim of that excessive force commits no crime if she defends herself from it. Another consideration however that enters into this equation, even if the arrested person later establishes the unlawfulness of the officer's use of force, she loses her justification if she is the initial aggressor or the provoker of the unlawful force used by the officer.

Id. at 270.

committed an assault on the defendant and was not entitled to the legal protection of self-defense, even though the jury may have thought that Scott subsequently used excessive force in the course of finalizing the arrest. The jury might also have concluded that Scott did not use excessive force in making the arrest without regard for whether or not he used excessive force on the plaintiff thereafter. An assault conviction based on either one of these scenarios would have been consistent with the judge's instructions.

Because I conclude that "a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration," the defendant's collateral estoppel defense fails. *Ashe*, 397 U.S. at 444. Certainly, as the plaintiff apparently concedes, the criminal conviction for assault precludes her from denying that she committed an assault on Scott during the course of her arrest. *See* Memorandum of Law in Support of Plaintiff's Objection to Summary Judgment filed December 15, 1992 (Docket No. 18) at 12. The criminal conviction, however, does not preclude her from showing in this suit that at some point subsequent to her assault on defendant Scott he employed excessive force against her.

QUALIFIED IMMUNITY

In ruling on a qualified immunity defense in a motion for summary judgment, the usual summary judgment criteria apply. *Amsden v. Moran*, 904 F.2d 748, 752 (1st Cir. 1990), *cert. denied*, 498 U.S. 1041 (1991). Thus, "if the record reveals a genuine dispute over a fact-specific question essential to the qualified immunity inquiry, summary judgment cannot be granted." *Buenrostro v. Collazo*, 973 F.2d 39, 43 (1st Cir. 1992) (citation omitted).

I have previously denied Scott summary judgment on the issue of qualified immunity. *See* Memorandum Decision at 15. By supplementing the record with the complete criminal trial transcript, Scott hopes to bolster his claim that his use of force against the plaintiff was objectively reasonable. The addition of the full criminal transcript, however, does nothing to change the earlier result. Viewing the facts of the plaintiff's arrest in the light most favorable to the plaintiff, there is

still a genuine issue as to whether Scott's use of force was unreasonable and excessive. *See Prokey v. Watkins*, 942 F.2d 67, 73 (1st Cir. 1991); *Fournier v. Joyce*, 753 F. Supp. 989, 993 (D. Me. 1990). Accordingly, the question of defendant Scott's qualified immunity cannot be resolved at the summary judgment stage. *See Broderick v. Roache*, 996 F.2d 1294, 1299 (1st Cir. 1993).

DISCRETIONARY IMMUNITY

In addition to her section 1983 claim, the plaintiff claims compensatory and punitive damages under Maine tort law for the injuries allegedly caused by Scott's use of excessive force. Scott argues that he is entitled to discretionary immunity under the Maine Tort Claims Act ("Act").

Under the Act, governmental employees are liable for their tortious conduct unless the Act specifically grants immunity. 14 M.R.S.A. § 8104-D, 8111; *Leach v. Betters*, 599 A.2d 424, 425 (Me. 1991). The Act provides immunity to all governmental employees, including police officers, for discretionary functions performed within the scope of their employment. 14 M.R.S.A. § 8111(1)(C);³ *Preti, Flaherty, Beliveau & Pachios v. Ayotte*, 606 A.2d 780, 782 (Me. 1992). The

³ The relevant portion of the Act's immunity provision reads as follows:

1. Immunity. Notwithstanding any liability that may have existed at common law, employees of governmental entities shall be absolutely immune from personal civil liability for the following:

...

C. Performing or failing to perform any discretionary function or duty, whether or not the discretion is abused; and whether or not any statute, charter, ordinance, order, resolution, rule or resolve under which the discretionary function or duty is performed is valid.

...

The absolute immunity provided by paragraph C shall be applicable whenever a discretionary act is reasonably encompassed by the duties of the governmental employee in question, regardless of whether the exercise of discretion is specifically authorized by statute, charter, ordinance, order, resolution, rule or resolve and shall be available to all governmental employees, including police officers . . . , who are required to exercise judgment or discretion in performing their official duties.

test for discretionary immunity is whether the police officer's conduct clearly exceeded, as a matter of law, the scope of any discretion he or she could have possessed in his or her official capacity as a police officer. *Polley v. Atwell*, 581 A.2d 410, 414 (Me. 1990). Neither party disputes that court security officers, as law enforcement officials, have the same discretion as police officers in making arrests. See Memorandum of Law in Support of Plaintiff's Objection to Summary Judgment filed May 12, 1993 (Docket No. 30) at 12; Memorandum of Law in Support of Defendant's Supplemental Motion for Summary Judgment (Docket No. 26) at 17.

Making a warrantless arrest is a discretionary function. *McKenney v. Labbe*, 588 A.2d 313, 314 (Me. 1991). A police officer also has the discretion to use a reasonable degree of force when making such an arrest. 17-A M.R.S.A. 107(1). A police officer acts within the scope of his discretion, and thus is entitled to immunity from claims based upon his conduct while making a warrantless arrest, if the officer avoids wanton or oppressive conduct. *Leach*, 599 A.2d at 426. A use of force in making an arrest may rise to the level of wanton or oppressive conduct if, for example, the officer uses more force than he or she thinks is necessary or employs such force in bad faith or with an improper motive. See *id.*; see also *Blanchard v. Bass*, 153 Me. 354, 358, 139 A.2d 359, 361 (1958) (wanton misconduct defined as a reckless disregard of danger to others).

Assuming that an excessive or unreasonable use of force in making an arrest constitutes wanton or oppressive conduct under Maine law, see *Leach*, 599 A.2d at 426, I conclude that defendant Scott is not entitled to summary judgment on the issue of discretionary immunity. As noted earlier, viewing the facts of the arrest in the light most favorable to the plaintiff, there is a genuine issue as to whether the defendant's use of force was unreasonable and excessive. If the defendant's use of force was unreasonable and excessive, the defendant would not be entitled to discretionary immunity under the Act since such conduct would have clearly exceeded, as a matter of law, the scope of the defendant's official discretion in making the arrest. See *Maguire v.*

Municipality of Old Orchard Beach, 783 F. Supp. 1475, 1487 (D. Me. 1992). Consequently, because there is a genuine issue concerning whether Scott's use of force was excessive, I must deny summary judgment on his claim of discretionary immunity.

CONCLUSION

For the foregoing reasons, defendant Scott's supplemental motion for summary judgment is ***DENIED***.

Dated at Portland, Maine this 27th day of September, 1993.

David M. Cohen

United States Magistrate Judge